IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 4240 of 2005

Between:

M/s. Premier Enterprises, Sri Ronald Ross Road, Secunderabad-500 003, rep. by its General Power of
Attorney Holder Mr. Pradeep Rawal, S/o. M.L. Rawal.

..... PETITIONER

AND

The Commercial Tax Officer, M.G. Road Circle, Secunderabd.

....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction particularly in the nature of Writ of Mandamus declaring the action on the part of the respondent namely the commercial Tax Officer, M.G.Road, Secunderabad in causing undue delay of more than two years in refund of the excess amount of Rs. 9.56,414/- relating to assessment year 1992-93 pursuant to the proceedings dt. 5.10.2002 and five years of the appeal orders of 2.12.1999, in spite of the representations of the petitioner on 14.7.2003 as also on 11.8.2003 as illegal, arbitrary, improper, unjust and contrary to the principles of natural justice and consequently direct the respondent to refund the above mentioned amount of
Rs. 9.56,414/- along with interest at the rate of 12% from the date of expiry of six months of the orders of the Appellate Deputy Commissioner of CT as provided under Section 33 F till the actual date of refund Court.

Counsel for the Petitioner: MR.M.V.J.K.KUMAR

Counsel for the Respondent: SRI K.RAJI REDDY, SPECIAL STANDING COUNSEL FOR COMMERCIAL TAX.

The Court made the following:

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ORDER: **(Per BRSR,J)**

The petitioner in the instant writ petition invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a Writ of *Mandamus* declaring the action on the part of the respondent in causing undue delay of more than two years in refund of excess amount of Rs.9,56,414/- relating to the assessment year 1992-93, pursuant to the proceedings, dated 05.10.2002, and five years of appeal orders on 02.12.1999, in spite of representations of the petitioner on 14.07.2003 and also on 11.08.2003, as illegal, arbitrary and improper.

The petitioner is a dealer. That for the assessment year 1992-93, the petitioner's assessment was completed on 09.09.1994. The authority levied tax on separate sale of bottles and cartoons as also bottle deposits in respect of sale of beer, at a rate applicable to the contents. Aggrieved by the said assessment made on 09.09.1994, the petitioner preferred appeal, which was disposed of on 02.12.1999, by which the separate sale of cartoons was directed to be taxed at the rate applicable to the containers in terms of the then Entry-19 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. The said order was given effect to by a consequential assessment order on 22.08.2002 and on account of the said consequential assessment proceedings, the petitioner, admittedly, became entitled to refund of an amount of Rs.11,21,143/-. That an amount of Rs.1,64,729/-, out of the said amount was adjusted for the assessment year 1997-98 leaving the finally determined excess amount of Rs.9,56,414/-. The Form-'C' notice accompanying the consequential assessment proceedings, dated 22.08.2002, were also issued. These facts are not in dispute.

It is under those circumstances, the petitioner made representations before the respondent on 14.07.2003 and on 11.08.2003 seeking refund of the said amount. In the counter filed by the respondent, however, it is stated that the refund of Rs.9,56,414/- has been withheld by the Department in exercise of purported power under Section
33-C of the Andhra Pradesh General Sales Tax Act, 1957 and after obtaining the prior permission of the Deputy Commissioner (CT), Panjagutta Division.

It is further stated in the counter affidavit that the petitioner was also in arrears of tax of Rs.9,79,999/- for the year 1993-94 and the appeal filed by the petitioner before the Sales Tax Appellate Tribunal was disposed of by remitting the case to the assessing authority, which is under verification. That apart, the T.R.C. filed by the Department before this Court, challenging the order of Sales Tax Appellate Tribunal in T.A.Nos.920 of 1993 and 783 of 1996 are pending disposal. It is under those circumstances, the amounts were withheld.

The short question that falls for our consideration is whether the respondent, in law, is entitled to withhold the refund?

Learned counsel for the petitioner,
Sri M.V.J.K.Kumar, submits that so far as the assessment order for the assessment year 1992-93 is concerned, it has become final, under which the competent authority determined that the petitioner is entitled to refund of Rs.9,56,414/-. It is further submitted that as on today, there is no proceeding under which the petitioner is required to pay or liable to pay any arrears of sales tax for any assessment year. The submission is that in such view of the matter, the power under Section 33-C of the Act could not have been exercised by the authorities concerned.

Sri K.Raji Reddy, learned Standing Counsel for the Department relying upon Section 33-C of the Act contends that the licensing authority, with a previous approval of the Deputy Commissioner, withheld the refund since he is of the opinion that the grant of refund is likely to adversely affect the revenue.

Section 33-C of the Act reads as follows:

> *"33-C Power to withhold refund in certain cases:- Where an order giving rise to a refund to an assessee or licensee is the subject matter of an appeal or further proceeding, or where any other proceeding under this Act is pending, and the assessing or the licensing authority is of the opinion that the grant of the refund is likely to adversely affect the revenue, the assessing or the licensing authority may, with the previous approval of the Deputy Commissioner, withhold the refund till such time as the Deputy Commissioner may determine."*

That a plain reading of Section 33-C suggests that only in cases where an order giving rise to refund to an assessee is the subject matter of appeal or further

proceedings or even in cases where any other proceeding under the Act for realization of any amounts due from the dealer is pending, the licensing authority may, if he is of the opinion that the grant of refund is likely to adversely affect, he may withhold the same with the previous approval of the Deputy Commissioner. In the instant case, no appeal or no further proceeding is pending arising out of an order giving rise to refund to the petitioner. The Tax Reference Cases stated to be pending against the petitioner are for different assessment years and they do not relate to the order giving rise to the refund in the instant case. That even under those orders, the petitioner is not found due to pay any tax, as such, to the Department.

It is, however, stated in the counter affidavit that the petitioner was in arrears of tax of Rs.9,79,999/- for the assessment year 1993-94 and therefore, this particular refund amount was withheld, since the proceedings arising out of the assessment order for the year 1993-94 are still pending under review petitions. This plea is also untenable and unsustainable for the simple reason that there is no determination as such for the assessment year 1993-94 yet by any authority since the appeal preferred by the petitioner herein, in fact, was allowed setting aside the order of assessment and the matter has been remanded to the assessing authority, which is admittedly under verification. Suffice it to hold that so far as the assessment year 1992-93 is concerned, there is no appeal or further proceeding pending in any Court.

In the circumstances, we are of the opinion that the petitioner is entitled to refund of the amount in terms of the order passed by the respondent.

The writ petition is accordingly allowed directing the respondent to give effect to the order of refund and accordingly refund the amounts within a period of six weeks from the date of this order.

B. SUDERSHAN REDDY, J.

Date: 13.04.2005.

C.V. RAMULU, J.

GS/KS

To

1. The Commercial Tax Officer, M.G. Road Circle,
Secunderabd.

2. Two CD Copies.